

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,647

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating her Medicaid. The issue is whether the Department sent the petitioner timely notice of its decision to terminate her benefits.

FINDINGS OF FACT

Prior to August, 1996, the petitioner and her two children were receiving ANFC and Medicaid based on the absence of the children's father from the home. The father returned to live with the family in August. On August 30, the Department sent the petitioner a notice terminating her ANFC benefits and increasing her Food Stamps because of the father's presence in the household. The petitioner does not dispute that she received this notice.

However, the Department's records show that on that same date, August 30, 1996, it generated a separate notice to the petitioner advising her, inter alia, that her Medicaid coverage would terminate as of September 30, 1996.<sup>(1)</sup>

The petitioner denies ever receiving the notice terminating her Medicaid. In September, she scheduled surgery for herself on October 7, 1996. She maintains that she didn't learn her Medicaid had been terminated until she received the bills for her surgery that Medicaid refused to cover. She also maintains that if she had known that her Medicaid coverage was ending on September 30, she could easily have scheduled her surgery before that date. The petitioner wrote a letter to the Department on October 26, 1996, appealing the termination of her Medicaid.

The petitioner's claim that she did not receive the notice regarding her Medicaid appears credible. It is highly unlikely she would have scheduled her surgery for a date after she had received notice her Medicaid was being terminated.

In the past, in such circumstances (when the recipient claims not to have received notice of a Department action), the Department could produce a copy of the notice in question that had been signed by the caseworker who generated it, and with the "date mailed" section on the notice filled in by that caseworker. The Department represents, however, that effective last summer it instituted an unwritten

policy whereby workers would only sign and date notices if they were being mailed on a date other than that indicated on the top of the notice itself. The notices are now almost exclusively computer generated based on information entered by the caseworker. The copies that are mailed out to recipients still have lines at the bottom, one of which is marked "date mailed", and another one for a signature that appears over the typewritten name of the caseworker. According to the Department, however, these lines are no longer filled out if the notice is mailed out on the same date that appears on the top of the notice. The copies kept by the Department have the same appearance--i.e., undated and unsigned.

At the hearing, the petitioner's caseworker represented that she has no specific recollection of mailing the notice in question to the petitioner, and she frankly noted her own misgivings about the policy of not signing and dating notices because workers can rarely, if ever, specifically recall sending individual notices.

The petitioner does not claim that she had any problems receiving her mail, and she appears to have received all the other notices sent by the Department. It is, therefore, highly unlikely that the notice in question was lost in the mail. In light of the credibility of the petitioner's claim that she did not receive the notice, and absent any evidence available to the Department to verify that it actually mailed the notice to the petitioner, the most reasonable conclusion to be drawn is that Department generated but for some reason neglected to mail the notice in question.

### ORDER

The Department's decision is modified. The petitioner shall be covered under Medicaid at least through October 7, 1996.

### REASONS

Neither the regulations nor due process requires that the Department sign and date all notices sent to recipients.

See Medicaid Manual § M141. As a matter of evidence, however, it fails to do so at its peril. When, as here, a recipient makes a credible representation<sup>(2)</sup> that she did not receive a particular notice, the Department's new "policy" of not signing and hand dating notices deprives the Department of any compelling evidence that it actually mailed that notice.<sup>(3)</sup> In this case, the hearing officer having found that the Department did not mail the notice in question to the petitioner, the Department must modify its decision terminating the petitioner's Medicaid so that it is not given effect until the petitioner actually received notice of it--sometime after her surgery on October 7, 1996.

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1. The notice also advised the petitioner that her children would remain eligible for Medicaid.
2. The Department declined the opportunity in this case to examine the petitioner under oath or otherwise challenge her credibility.
3. In past cases the Board has deemed a copy of a signed and hand dated notice to be sufficient proof that the Department had mailed that notice.